



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

101

RSA-1089-1991 (O&M)

Reserved on 20.11.2024

Date of decision:13.01.2025

Gurdeep Singh (since deceased) through LRs

... Appellant

Vs.

Biram Singh (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ravish Bansal, Advocate for the appellant.

Mr. Kanwar Abhay Singh, Advocate
for the respondent.**SUVIR SEHGAL J.**

1. Aggrieved with the judgments and decrees passed by the Courts below whereby the suit filed by the plaintiff-respondent has been decreed, defendant-appellant has filed the instant second appeal.

2. Plaintiff-respondent filed a suit for declaration to the effect that he is the owner in possession of land measuring 6 Kanals 15 Marlas bearing khasra No. 3036, Agawar Khokhar, Faridkot (for short "suit property") and for restraining the defendant-appellant from taking possession of the suit land.

3. Pledged case of the plaintiff-respondent is that land measuring 40 kanals 2 marlas in khasra no.4107 was in the possession of Channan as occupancy tenant and later as Adna Malak. By a registered sale deed dated 18 Baisakh 2002 BK, he sold the land in



equal share to Sardar Kishan Singh, father of the plaintiff and Chirag Din. This land was mortgaged with Wazir and his four brothers, vide registered mortgage deed dated 13th Chet 1987 BK and was redeemed vide receipt dated 21st Har, 2004 BK. After the death of Sardar Kishan Singh, plaintiff, who is the only heir, has been in continuous possession of the land. Upon consolidation, disputed land was allotted in lieu of the purchased land. The mutation for redemption was not entered with the revenue authorities, but the possession remained with the plaintiff and before that with his father. On coming to know that the land has been transferred by the Tehsildar (Sales) Rehabilitation, Ferozepur, in favour of the defendant, plaintiff filed the suit.

4. Upon notice, suit was contested by the respondent by taking various preliminary objections and the averments made in the plaint were denied. Defendant took a stand that the suit land was purchased by him in open auction and sale price of Rs.22,500/- was paid by him. It has been stated that the sale was approved by the Settlement Commissioner vide order dated 30.06.1983 and warrant of possession was issued in favour of the defendant, who became the owner of the land. Plaintiff filed a replication controverting the stand taken by the defendant and reasserting the claim raised in the plaint. On the basis of the pleadings of the parties, following issues were framed by the trial Court:-

- i) Whether the plaintiff is the owner in possession of the suit land? OPP
- ii) Whether the suit is not maintainable in the present form? OPD



iii) Whether the plaintiff has locus standi to file the present suit? OPP

iv) Whether the suit is bad for non-joinder of necessary parties? OPD

v) Whether the suit is time barred? OPD

vi) Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP

vii) Whether the defendant has purchased the suit land in open auction from the Tehsildar, Sales for Rs.22,500/-? If so, its effect? OPD.
viii) Relief.

5. Besides leading documentary evidence, plaintiff examined Kastur Chand and Ram Partap as PW-1 and PW-2, respectively and he himself stepped into the witness box as PW-3. Defendant examined Phuman Singh as DW-1 and he appeared himself in the witness box as DW-2. After contest, the trial Court by judgment dated 29.11.1988, decided all the issues in favour of the plaintiff and the suit was decreed. Defendant remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Faridkot, by judgment dated 07.01.1991, resulting in the institution of the present appeal by him.

6. Counsel for the appellant has contended that as the property vested in the Custodian, the jurisdiction of the civil court was ousted under Section 46 (a) of the Administration of Evacuee Property Act, 1950 (for brevity "the 1950 Act"). It is his argument that there is no evidence on record to connect the pre-consolidation and the post-consolidation land and there is no explanation as to why for a period of almost 10 years, the mutation was never recorded with the revenue authorities. He urges that the receipt of redemption, Ex.PX, is an unregistered document and cannot be read into evidence. Claiming



that the defendant is a *bona fide* purchaser for valuable consideration, he submits that the defendant's ownership deserves to be protected. He has asserted that the State of Punjab and the Custodian are the necessary parties and the civil suit could not have been decided in their absence. In support of his arguments, he has relied upon :-

- (i) **Chief General Manager (IPC) MP Power Trading Power Co. Limited and another Versus Narmada Equipments Pvt. Ltd. 2021(2) RCR (Civil) 535;**
- (ii) **Cantonment Board and another Versus Church of North India, (2012) 12 SCC 573;**
- (iii) **Sunder Dass Versus Ram Parkash, (1977)2 SCC 662;**
- (iv) **Chetu Ram Versus Asanand, 1962 PLR 335;**
- (v) **Ram Kumar and others Versus Mohinder and others, 2012 (1) PLR 281.**

7. While supporting the judgments and decrees passed under the appeal, counsel for plaintiff-respondent has argued that the plaintiff has not only linked the new khasra numbers with the old khasra numbers but has also proved the receipt of redemption of the mortgage. He urges that the suit property never vested in the Punjab Government and it could have been sold in auction.

8. I have heard counsel for the parties and considered their rival submissions besides examining the record requisitioned from the trial Court.

9. An analysis of the evidence led by the parties reveals that the State of Faridkot was the owner of 40 Kanals 2 Marlas land in khasra No. 4107/2, as is evident from Jamabandi, Ex.P-5, for the year

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1999-2000 BK equivalent to 1942-43 and Channan Singh, was shown as the occupancy tenant, who had mortgaged his rights in favour of Wazir, etc. for Rs. 200/-. By certificate dated 18.01.2002 BK equivalent to the year 1944-45, Ex. P-4, full proprietary rights in the said land were granted to Channan Singh, who sold the land in equal share to Kishan Singh, father of the plaintiff and Chirag Din vide registered sale deed dated 18 Baisakh 2002 BK equivalent to 13.04.1945, Ex.P-1. Registered Mortgage Deed dated 26.04.1941 Ex.P-3, was redeemed on payment of Rs. 200/- by Kishan Singh and Chirag Din vide receipt Ex. PX. As these documents are more than 30 years old, presumption as to their due execution and attestation under Section 90 of the Indian Evidence Act, 1872, would apply. The mutation of the sale deed was entered into in the revenue records and sanctioned on 16.04.1955 in favour of Kishan Singh and Chirag Din vide Ex.P-16. Although there is no explanation for the delay of one decade in getting the mutation sanctioned, but in view of the unimpeachable evidence lead by the plaintiff, it stands established that his predecessor had purchased the land in dispute from Channan Singh, who was the original owner, vide a registered sale deed for consideration. Plaintiff has led evidence by producing Ram Partap, PW-2, who was posted as a Patwari at Faridkot in the year 1968 and he has proved his report, Ex.P-2, to link the pre-consolidation land with the suit land. Furthermore, it is come on the record that the original consolidation record has been burnt in fire and the secondary evidence lead by the plaintiff connects the pre-consolidation and post



consolidation land. Moreover, the defendant in written statement had never challenged that the suit land is not the land which was sold by Channan Singh.

10. An examination of the receipt Ex.PX, shows that the mortgagees acknowledged the receipt of the mortgaged amount from Kishan Singh and Chirag Din and handed over the possession of the land as also the original mortgage deed after relinquishing their rights in the mortgaged land. It appears that since the mutation in respect of the land was never entered into in favour of the plaintiff's predecessor and the land continued to be shown in the possession of Wazir etc., after the independence of the country, the Custodian of evacuee property put the land to auction. No evidence has been led by the defendant to show that the plaintiff was divested of the proprietary rights in the suit land. Merely on the basis of entries in the revenue record, State Government could not become the owner, nor could the suit land be sold by auction. In view of this backdrop, neither the State Government nor the Custodian was a necessary party to the litigation. As the land never vested in the Custodian, it cannot be deemed to have become an evacuee property and the provisions of the 1950 Act do not apply nor is the suit barred under the said statute. Furthermore, this plea was not taken by the defendant before both the Courts and has been raised for the first time in the instant second appeal.

11. The receipt Ex.PX does not create or extinguish any right in the suit property and it is simply a document which shows the payment of the mortgage amount. The return of the original



mortgaged deed and the delivery of the possession to the mortgagor are facts which depict the redemption of the suit property. The receipt, Ex.PX, does not require compulsory registration and the arguments of the counsel for the appellant are, therefore, rejected. The judgments relied upon by him do not advance his case. Although, defendant has argued that he is the bona fide owner for consideration, but no documentary evidence has been lead to establish that the suit property was purchased by him or its possession was handed over to him. Neither the warrant of possession claimed to have been sanctioned nor the sale deed has been produced and exhibited in evidence lead by him. This Court therefore, does not find any illegality or perversity in the judgments passed by both the Courts, which are affirmed.

12. Finding no merit in the appeal, it is dismissed with no order as to costs.

13. As the main appeal has been decided, pending applications, if any, shall also stands disposed of.

13.01.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No